

**NOT FOR PUBLICATION**

**DEC 16 2004**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERT J. BRIONES,

Petitioner - Appellant,

v.

ROY A. CASTRO, Warden,

Respondent - Appellee.

No. 03-16057

D.C. No. CV-00-20211-EAI

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Edward A. Infante, Magistrate, Presiding

Submitted December 9, 2004\*\*  
San Francisco, California

Before: D.W. NELSON, KLEINFELD, and GOULD, Circuit Judges.

We affirm the district court's denial of Briones's habeas petition.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The state court’s decision was neither contrary to, nor an unreasonable application of, federal law as determined by the Supreme Court.<sup>1</sup> The state court concluded that the term “specific intent” includes both express and implied malice. We cannot review that determination of state law.<sup>2</sup> The jury was therefore not prevented from considering the effect of Briones’s intoxication on his mental state if it concluded that intoxication had materially affected his mental state.

**AFFIRMED.**

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<sup>1</sup> 28 U.S.C. § 2254(d)(1).

<sup>2</sup> Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).